



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 11, 1998

Mr. John Steiner
Division Chief, Research and Opinions
City of Austin
P.O. Box 1546
Austin, Texas 78767-1546

OR98-1897

Dear Mr. Steiner:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 117310.

The City of Austin (the "city") received a request for "records on any security problems you have had at the Terrazas branch library in the last year and six months." You submitted to this office the records at issue. The records include offense reports which you assert are protected from disclosure under sections 552.103 and 552.108 of the Government Code. You also submitted as responsive to the request the Austin Public Library's internal reports of incidents, which you contend are excepted from disclosure under sections 552.103 and 552.124 of the Government Code. We will address each of your arguments against disclosure.

To show that section 552.103(a) is applicable, a governmental entity must show that (1) litigation is pending or reasonably anticipated and (2) the information at issue is related to the litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4. Litigation is not reasonably anticipated unless "we have concrete evidence showing that the claim that litigation may ensue is more than mere conjecture." Open Records Decision No. 452 (1986) at 4.

Litigation has been found to be reasonably anticipated when an individual has hired an attorney who demands damages and threatens to sue the governmental entity. Open Records Decision No. 551 (1990) at 2. However, when a requestor on several occasions publicly states a threat to sue, this alone does not show that litigation is reasonably anticipated. You submitted information to this office that shows the requestor has written

letters to the city claiming that the city is liable for certain damages and that he has told a city employee that he is considering suing the city. However, this is not sufficient to show that the city reasonably anticipates litigation. Open Records Decision No. 518 (1989) at 5 (governmental body must show that litigation involving a specific matter is realistically contemplated). The records thus may not be withheld from disclosure under section 552.103(a).

You contend that the responsive police reports concerning incidents at this branch of the library are protected from disclosure pursuant to section 552.108 of the Government Code. Section 552.108(a)(1) provides an exception from disclosure for information that is held by a law enforcement agency or prosecutor and that deals with the detection, investigation, or prosecution of crime, when release of such information would interfere with the detection, investigation, or prosecution of crime. You assert that the reports at issue all concern ongoing criminal investigations and should not be released.

We note that one of the police reports at issue concerns juveniles. Section 552.101 excepts from required public disclosure information that is made confidential by law, including information made confidential by statute. Section 58.007(c) of the Family Code reads in pertinent part as follows:

Except as provided by Subsection (d), law enforcement records and files concerning a child may not be disclosed to the public

Subsection (d), which concerns the transfer of records in certain circumstances, is apparently inapplicable here. We believe section 58.007(c) makes confidential the requested report. See Fam. Code § 51.02(2) (defining "child"). Thus, the city must withhold this report from disclosure in its entirety.

Most of the remaining documents submitted to this office consist of front page offense report information. Section 552.108(c) provides that basic offense report information is not protected from disclosure under section 552.108. Basic information is the type of information that is generally included on the front page of an offense report, including a detailed description of the incident. *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177, 186-87 (Tex. Civ. App.--Houston [15th Dist.] 1975), *writ ref'd n.r.e. per curiam*, S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 (1976). You must release the front page offense report information on each of these incidents, other than the one involving juveniles. The remaining portions of these reports may be withheld from disclosure, since you assert that they are all related to ongoing investigations. Open Records Decision No. 216 (1978) at 3 (release of information during pending criminal case would interfere with prosecution of crime and law enforcement interests).

You submitted to this office library report forms that discuss incidents that have occurred at the library and actions that were taken in response. You assert section 552.124 for the report forms that identify library patrons. Section 552.124 provides that a record of

a public library or library system "that identifies or serves to identify a person who requested, obtained, or used a library material or service" is confidential, with several exceptions. Those exceptions do not appear to be applicable. We agree that the library report forms which identify patrons are confidential, as you have marked.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Ruth H. Soucy
Assistant Attorney General
Open Records Division

RHS/ch

Ref: ID# 117310

Enclosures: Submitted documents

cc: Mr. Glenn W. Gill
P.O. Box 771
Taos, New Mexico 87571
(w/o enclosures)